

**OPEN RECORDS AND MEETINGS OPINION
2002-O-11**

DATE ISSUED: November 29, 2002

ISSUED TO: Larimore City Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from James R. Hougen asking whether a special meeting held by the Larimore City Council violated the open meetings laws.¹

FACTS PRESENTED

An opinion issued under N.D.C.C. § 44-04-21.1 must be based on the facts given by the public entity. N.D.C.C. § 44-04-21.1. The Larimore City Council scheduled a special meeting for August 13, 2002. The Larimore City Auditor advised that she drafted the notice of the special meeting and posted it on the outside door of city hall and the door of the auditor's office on or around August 9, 2002. She indicated she did not keep a hard copy of the notice in her office as it is not her practice to do so. The notice specifically stated that a decision about bond counsel would be made at the meeting. The notice also indicated other issues may be addressed. Minutes of the meeting were kept and the meeting was recorded. The minutes of the special meeting indicated the Council discussed several topics in addition to the decision to select bond counsel.

¹ Mr. Hougen raised questions about two other meetings that had been scheduled but were subsequently cancelled and therefore will not be addressed in this opinion.

ISSUE

Whether the Larimore City Council violated N.D.C.C. § 44-04-20 by failing to give proper notice for a special meeting and by discussing matters during a special meeting that were not in the notice.

ANALYSIS

Public notice must be given in advance of all meetings of a public entity. N.D.C.C. § 44-04-20(1). Every notice must contain the date, time, and location of the meeting and the topics to be discussed at the meeting. N.D.C.C. § 44-04-20(2). Notice must be posted at the principal office of the governing body and at the location of the meeting on the day of the meeting. N.D.C.C. § 44-04-20(4). In the case of a city council, the notice must also be filed with the city auditor. Id. For a special meeting of a governing body, notice must be given to the public entity's official newspaper, if any, and any representatives of the news media who have requested to be notified of special or emergency meetings. N.D.C.C. § 44-04-20(6). Topics that may be considered at an emergency or special meeting are limited to those included in the notice to the media. N.D.C.C. § 44-04-20(6).

In response to this office's inquiry, the Mayor of Larimore explained that the city posts all notices outside the door of city hall and on the door of the auditor's office. The meetings take place at city hall. He also explained that at the time the notice was posted, the only topic known to the city auditor was the decision to hire bond counsel. The city auditor indicated that the local newspaper was informed of the meeting. The notice posted and sent to the council members stated:

August 13, 2002 Special meeting of the city council. Bond counsel will be decided at this time along with any other issues that may need council attention.

There are two problems with the meeting notice provided. First, the notice does not contain the minimum items required in N.D.C.C. § 44-04-20. Specifically, the notice does not indicate the time of the meeting or its location. Second, the notice fails to specifically identify the topics to be discussed at the meeting. Topics that may be considered at an emergency or special meeting are limited to those included in the notice to the media.²

² The City Attorney indicated there was some confusion about whether N.D.C.C. § 44-04-20(2) applied to special meetings. That subsection allows for some flexibility with the

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N.D.C.C. § 44-04-20(6); 2001 N.D. Op. Att'y Gen. O-15; 2000 N.D. Op. Att'y Gen. O-03; 1998 N.D. Op. Att'y Gen. O-01.

In reviewing the minutes of the meeting, nine topics, in addition to hiring bond counsel, were addressed by the council. None of these topics was included in the notice. This office has found special meeting notices insufficient when they failed to indicate that the meeting would include an executive session. See 2000 N.D. Op. Att'y Gen. O-03; 2001 N.D. Op. Att'y Gen. O-15; 1998 N.D. Op. Att'y Gen. O-01. In 2002 ND Att'y Gen Op. O-07 this office found a special meeting notice to be insufficient because it did not contain the location or the topics of the meeting. The notice in this case only indicates that "any other issues that may need council attention" will be discussed. This description lacks the specificity required for a special meeting.

The deficiencies in this notice precluded any member of the public from obtaining proper advance notice of the special meeting and its topics. As such, it is my opinion that the Larimore City Council violated N.D.C.C. § 44-04-20 by failing to provide sufficient public notice of its August 13, 2002, special meeting and by discussing topics not included in the notice.

STEPS NEEDED TO REMEDY VIOLATION

The City Council must prepare an amended notice of the August 13, 2002, meeting containing all the topics that were discussed at the meeting. The notice must be posted at the city council's principal office, filed with the city auditor, and given to the city's official newspaper and to any representatives of the news media who have requested to be notified of special or emergency meetings. The notice should clearly state that if any member of the public wants to review the minutes of the meeting or listen to the recording, they will be available at the city auditor's office. Copies of the minutes must be given free of charge upon request. The notice should remain posted until after the next regularly scheduled meeting. Due to the thoroughness of the minutes and the fact that the meeting was also recorded, a new meeting is unnecessary to remedy the violation.

agendas for regular meetings. It provides that for regular meetings, the lack of an agenda, the departure from or an addition to the agenda, does not affect the validity of the meeting or the actions taken. N.D.C.C. § 44-04-20(2); 2001 N.D. Op. Att'y Gen. O-15 (regular meetings are not limited by N.D.C.C. § 44-04-20(6) therefore allowing consideration of topics that are not listed on the agenda and notice).

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Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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